

## United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/472,988	12/28/1999	TERUAKI OKUDA	35.G2524	9448
5514	7590 06/22/2005	•	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO			SCHWARTZ, PAMELA R	
	30 ROCKEFELLER PLAZA NEW YORK, NY 10112		ART UNIT	PAPER NUMBER
			1774	
			DATE MAILED: 06/22/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

D.	$\mathcal{J}$	/				
<i>,</i>	Application No.	Applicant(s)				
Office Action Summan	09/472,988	OKUDA, TERUAKI				
Office Action Summary	Examiner	Art Unit				
The MAN INC DATE of the	Pamela R. Schwartz	1774				
The MAILING DATE of this communication appe Period for Reply	ears on the cover sheet with the c	orrespondence address				
A SHORTENED STATUTORY PERIOD FOR REPLY THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply - If NO period for reply specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	6(a). In no event, however, may a reply be tim within the statutory minimum of thirty (30) days ill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).				
Status						
1) Responsive to communication(s) filed on 12 Ap	oril 2005.					
	action is non-final.					
3) Since this application is in condition for allowance except for formal matters, prosecution as to the ments is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims						
4) Claim(s) 1-3,6 and 19-22 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.						
5) ☐ Claim(s) is/are allowed.						
6)⊠ Claim(s) <u>1-3,6 and 19-22</u> is/are rejected. 7)□ Claim(s) is/are objected to.						
8) Claim(s) are subject to restriction and/or	election requirement.					
Application Papers	·					
9) The specification is objected to by the Examiner	·					
·	epted or b) objected to by the E	Examiner.				
Applicant may not request that any objection to the c	. , ,					
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.				
Priority under 35 U.S.C. § 119						
12)⊠ Acknowledgment is made of a claim for foreign a)⊠ All b)□ Some * c)□ None of:	priority under 35 U.S.C. § 119(a)	-(d) or (f).				
1. Certified copies of the priority documents have been received.						
2. Certified copies of the priority documents have been received in Application No						
3. Copies of the certified copies of the priority documents have been received in this National Stage						
application from the International Bureau	, , , , , , , , , , , , , , , , , , , ,					
* See the attached detailed Office action for a list of	of the certified copies not receive	d.				
•··· • · · · · · · · · · · · · · · · ·						
Attachment(s)  1) Notice of References Cited (PTO-892)	4) 🔲 Interview Summary	(PTO-413)				
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Da	ite				
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date	5)  Notice of Informal P 6) Other:	atent Application (PTO-152)				
.S. Patent and Trademark Office						

Application/Control Number: 09/472,988 Page 2

Art Unit: 1774

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 2. Claims 1-3, 6 and 19-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,550,909. Although the conflicting claims are not identical, they are not patentably distinct from each other because of reasons of record.
- 3. Claims 1-3, 6 and 19-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,550,909 in view of Malhotra et al. (6,180,238) or Cousin et al. (4,554,181) for reasons of record.
- 4. With respect to these rejections, see the office action of January 12, 2005. Applicants' amendment of April 25, 2005 has overcome all other grounds of rejection.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Application/Control Number: 09/472,988 Page 3

Art Unit: 1774

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pamela Schwartz whose telephone number is (571) 272-1528.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PRSchwartz June 18, 2005

PRIMARY EXAMINER